

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA §  
§  
vs. § NO. 3:03-CR-101-P(01)  
§ (3-04-CV-1507-P)  
BOBBY RAY COX §

## ORDER

Petitioner, Bobby Ray Cox, plead guilty to one count of aiding and abetting the making of fictitious federal income tax returns in violation of 26 U.S.C. §§ 287 and 2. On January 7, 2004 Cox was sentenced to 44 months in custody of the Bureau of Prisons followed by three years supervised release.

Cox has now filed a section 2255 motion alleging, among other things, ineffective assistance of counsel at sentencing. The parties have agreed that the wrong sentencing manual was used in calculating the guidelines in this pre-Booker case. On the basis of the parties' agreement, the magistrate judge filed his report recommending that petitioner be re-sentenced.

The Court adopts the finding and conclusions of the magistrate judge and finds that petitioner received ineffective assistance of counsel at sentencing. Therefore, petitioner's sentence imposed on January 7, 2004, is vacated. A date for re-sentencing will be set by separate order.

Signed this 31<sup>st</sup> day of August, 2005.

Jorge A. Solis  
JORGE A. SOLIS  
UNITED STATES DISTRICT JUDGE